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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/586,551	01/22/2007	Hiroshi Kawano	5259-000068/US/NP	9949
27572 7590 02/26/2009 HARNESS, DICKEY & PIERCE, P.L.C. P.O. BOX 828 BLOOMFIELD HILLS, MI 48303				
EXAMINER DOUGHERTY, THOMAS M				
ART UNIT 2834		PAPER NUMBER		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action**  
**Before the Filing of an Appeal Brief**

**Application No.**

10/586,551

**Applicant(s)**

KAWANO ET AL.

**Examiner**

Thomas M. Dougherty

**Art Unit**

2834

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 20 January 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1 and 4-6.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Thomas M. Dougherty/  
Primary Examiner, Art Unit 2834

Continuation of 3. NOTE: The Applicant's remarks of both 9/26/08 (with figures 1 and 2) and 1/20/09 have been considered. The Applicant's arguments regarding the Myoga (JP 4-4766) are somewhat persuasive and that rejection is hereby withdrawn. The Applicant's arguments regarding the Ohnishi (US 4,965,482) however are not persuasive. The Applicant contends (paper of 9/26/08) that "the ultrasonic motor disclosed in Ohnishi also generates the longitudinal oscillation and the torsional oscillation in the direction of the arrows shown in FIG. 2 described below." Additionally the Applicant notes the his invention has a "pitch-direction flexural oscillation and the roll-direction flexural oscillation, which are recited in claim 1" and that these "are different from the longitudinal oscillation and the torsional oscillation, which are described in Myoga and Ohnishi, respectively". Note initially that Ohnishi clearly shows flexural vibrations in his figure 9. The hatch line through components 54 and 55 clearly shows a flexural vibration in a pitch direction. The discussion of that figure at col. 6, lines 54-63 notes: "The resonance frequency of flex vibrations indicated by the dotted line in FIG. 9 generated by the constituent elements, i.e. the bolt 55, the longitudinal vibration piezoelectric element 52, the coupling member 54b, and the ultrasonic vibrators 54a and 54c is determined by the size and elasticity constant of each member. The ultrasonic motor of this embodiment is advantageous in that the resonance frequency of flex vibrations can be matched with the torsional resonance frequency of the overall stator". Clearly the Applicant's contention that Ohnishi does not have a flexural vibration is incorrect. This flexural vibration is identical to the applicant's. It is a pitch-axis flexural vibration. The second issue with the Ohnishi reference regards his torsional vibration. The Applicant does not show, in any of the figures of his disclosure what is meant by the "roll-direction flexural oscillation" that he discusses in the response of 9/26/08. In that response, figure 1 shows rotation about an x-axis and this is called a roll-direction flexural oscillation. It is not clear at all how a roll vibration, can likewise be called a flexural vibration. These two descriptions appear to be mutually exclusive. A torsional vibration however clearly has a roll component while a flexural vibration does not. Note that Ohnishi shows in his figure 13 a torsional vibration with a curved line which has an arrow point at each end. This is labeled his torsional vibration. Note also that the Applicant in his figure 3 shows the same thing, a curved line A-B with an arrow point at each end, but this is not otherwise labeled. It cannot be discerned that the torsional vibration of Ohnishi's fig. 13, is different than that shown by the Applicant in his figure 3. Thus if the Applicant's figure 3 shows a roll component so does Ohnishi's figure 13. The Applicant's figures 1 and 2 of 9/26/08 show the putative differences between the Applicant's roll-directional flexural oscillation and torsional oscillation of Ohnishi. Note however that except for rotational orientation and location of these two oscillations, they are identical. Ohnishi's oscillation is simply placed at the axial node, while the Applicant's oscillation is moved down the X' axis.

The raising of issues which require new consideration involves new consideration of claims 4-6. Were the after-final amendment entered, the rejection of claims 4-6 based on USC 112 second paragraph would clearly be overcome, however additional consideration would likewise be clearly required.